IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.278 OF 2004

Pravin Tulshidas Somaiyya. ... Appellant.

Versus.

Sadashiv Laxman Mate. ... Respondent.

Shri P.N.Joshi for the Appellant.

Shri Peter Lobo with Shri S.D.Kadaifor the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 28th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Appeal is by the original Plaintiffs. A suit simplicitor for perpetual injunction was filed by the Appellant/Plaintiff. The suit is dismissed by the trial Court. Though there was no prayer made for return of consideration received by the Respondent under the suit agreement, the learned trial Judge directed the Respondent to pay a sum of Rs.50,000/- with interest at the rate of 6% per annum to the Appellant and the Appellant/Plaintiff was directed to pay necessary Court fees. The trial Court held that the suit simplicitor for injunction was not maintainable. The Appellate Court has confirmed the decree passed by the trial Court. The Appellate Court held that under the said agreement the Appellant was authorised to develop the suit property. The Appellate Court held that such an agreement is not enforceable. The Appellate Court therefore held that the Appellant/Plaintfif can be compensated in terms of money.

2. Shri Joshi appearing for the Appellant submitted that both the Courts below have recorded a finding that the termination of the suit agreement was not proper. He therefore submitted that the suit for injunction for preventing the Respondent from creating third party interest was maintainable. He submitted that the suit agreement is not an agreement for development but an agreement for sale. The learned Counsel for the Respondent supported the impugned Judgment and decree.

3. It is obvious that the Appellant was put to notice that the Respondent has repudiated the suit agreement. Whether the suit agreement was enforceable or not is altogether a different question. When more efficacious remedy by way of a suit for specific performance was available to the Appellant, he has filed a suit simplicitor for injunction. In view of section 41(4) of the Specific Relief Act, 1963, the Courts below were justified in refusing to pass decree of injunction in a suit simplicitor for perpetual injunction.

4. In view of this position, no substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.